

04-112-0001-0001

Before the
Federal Communications Commission
 Washington, D.C. 20554

In the matter of)
)
 Reporting Requirements for U.S. Providers of) IB Docket No. 04-112
 International Telecommunications Services)
)
 Amendment of Part 43 of the Commission's)
 Rules)

NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION AND SUMMARY

1 In this Notice of Proposed Rulemaking (Notice), we undertake a comprehensive review of the reporting requirements to which carriers providing U.S. international services are subject under Part 43 of our rules.¹ We seek comment on several changes to simplify the reporting requirements and to ensure the usefulness of the data collected by the Commission. These proposals seek to further the Commission's goal of protecting U.S. consumers and U.S. carriers from anti-competitive conduct, ensuring that consumers enjoy more choice in telecommunications services and decreasing prices for international calls, without imposing unnecessary burdens on carriers.

2 Under Part 43, carriers are currently required to file traffic and revenue reports,² circuit-status reports,³ and reports on the division of tolls for international telegraph service.⁴ We seek comment on the continued need for these reports in light of changes in the market for U.S.-international telecommunications services since the Commission last comprehensively reviewed the reporting requirements in the mid-1990s. We also seek comment on staff recommendations prepared by the International Bureau and the Wireline Competition Bureau to simplify and improve the traffic and revenue information the carriers report under section 43.61⁵ and the circuit capacity information they report under section 43.82,⁶ and to obtain information that is more relevant to the current issues in the international telecommunications market.

3 Specifically, we seek comment on whether to

- retain the annual traffic and revenue reporting requirements and the circuit-

¹ 47 C.F.R. Part 43 (2003)

² See 47 C.F.R. § 43.61 (2003)

³ See 47 C.F.R. § 43.82 (2003)

⁴ See 47 C.F.R. § 43.53 (2003)

⁵ 47 C.F.R. § 43.61

⁶ 47 C.F.R. § 43.82

status reporting requirements,

- eliminate the requirement that carriers report the number of messages they carry during the year;
- eliminate the requirement to file a traffic and revenue report or circuit-status report for traffic between the continental United States and U.S. off-shore points or between off-shore U.S. points;
- establish a \$5 million revenue threshold for a carrier to file annual traffic and revenue reports for pure resale services,
- establish a \$5 million annual revenue threshold for which miscellaneous services a carrier must report;
- simplify and improve the reporting requirements as recommended by the staff of the International Bureau and Wireline Competition Bureau in Appendix C;
- retain the quarterly traffic and revenue reporting requirements placed on large carriers – section 43.61(b)⁷ – and on foreign-affiliated carriers – section 43.61(c);⁸
- require that all carriers file annual circuit-status reports,
- consolidate sections 43.61 and 43.82 into one rule, and adopt the other proposed rule changes set out in Appendix B;
- have a consolidated filing manual for both the traffic and revenue reports and the circuit-status reports,
- change the filing date from March 31st for the circuit-status report and July 31st for the traffic and revenue report to May 1st for both reports; and
- repeal section 43.53, which requires U.S. carriers to report their contracts with foreign carrier correspondents concerning the division of international tolls for telegraph communications.

4. The changes that we discuss should increase the value of the data collected and the reports issued to both the Commission and outside parties. At the same time these changes should greatly reduce the number of forms and amount of information that smaller carriers will need to file, and should greatly reduce the complexity and detail of the information required from the largest carriers.

⁷ 47 C.F.R. § 43.61(b).

⁸ 47 C.F.R. § 43.61(c)

II. BACKGROUND

A. The Reporting Requirements

5 **Traffic and Revenue Reports.** The traffic and revenue reporting requirements for international telecommunications carriers are set out in section 43.61 of our rules.⁹ Section 43.61 contains three separate reporting requirements. First, all common carriers providing telecommunications service between the United States (the 50 states, the District of Columbia, and U.S. off-shore points) and any foreign country or point are required to report annually their traffic and revenue for each service they offer (annual traffic and revenue report).¹⁰ Second, carriers that meet certain traffic and revenue thresholds are required to report quarterly their traffic and revenues (Quarterly Large-Carrier Report).¹¹ Third, certain U.S. common carriers, except for Commercial Mobile Radio Service (CMRS) carriers,¹² that are affiliated with foreign telecommunications carriers¹³ that possess market power on the foreign end of a U.S.-international route must file a quarterly report of their traffic and revenues on the affiliated route (Quarterly Foreign-Affiliated Carrier Report).¹⁴

6 The annual traffic and revenue reports derive from the Commission's 1941 *Order No. 85*, which required U.S. international telegraph carriers to file statistical reports on their international telegraph traffic.¹⁵ In 1964, the Commission added the requirement for carriers to report traffic and revenues for international message telephone service (IMTS).¹⁶ The Commission last conducted a comprehensive review of the annual traffic and revenue reporting requirements in 1992.¹⁷ At that time, the Commission eliminated obsolete requirements,

⁹ 47 C.F.R. § 43.61

¹⁰ 47 C.F.R. § 43.61(a)

¹¹ 47 C.F.R. § 43.61(b) Section 43.61(b) sets forth four tests to determine which carriers must file the quarterly report. A U.S. carrier must file the report if its aggregate minutes of (1) U.S.-billed or (2) foreign-billed facilities-based or facilities-resale switched traffic exceeds one percent of total international traffic reported by all U.S. carriers. A carrier also must file the report if its aggregate minutes of (3) U.S.-billed or (4) foreign-billed facilities-based or facilities-resale switched traffic for any particular foreign route exceeds 2.5 percent of the total of such traffic reported by all U.S. carriers on that route.

¹² 47 C.F.R. § 20.3 (2003) defines a "commercial mobile radio service" as a "mobile service that is interconnected [to the public switched telephone network] and [a]vailable to the public." 47 C.F.R. § 20.9 (2003) states that provision of commercial mobile radio service is "common carriage."

¹³ As used in this NPRM, the term "foreign telecommunications carrier" or "foreign carrier" refers to an entity, whether government or privately owned, that provides domestic telecommunications services within the territory of a foreign country, or provides international telecommunications services between that country and other countries.

¹⁴ 47 C.F.R. § 43.61(c) A U.S. carrier (other than a CMRS carrier) must file a quarterly traffic and revenue report for its pure resale IMTS service for each route on which it is affiliated with a foreign carrier when that foreign carrier meets two conditions. First, the affiliated foreign carrier must have market power in the foreign market and, second, the affiliated foreign carrier must collect settlement payments from U.S. IMTS carriers. Section 63.09 defines when a carrier is affiliated with another carrier. 47 C.F.R. § 63.09(e)(2003)

¹⁵ See 29 F.R. 13816 (Oct. 7, 1964)

¹⁶ *Id.*

¹⁷ *Amendment of Section 43.61*, CC Docket No. 91-22, Report and Order, 7 FCC Rcd 1379 (1992) (*1992 Section 43.61 Amendment Order*)

streamlined the reporting requirements for pure resellers, and changed the format of section 43.61 to require carriers to file a traffic and revenue report for every service that they provide.¹⁸ In revising section 43.61, the Commission delegated authority to the Chief of the Common Carrier Bureau (now the Wireline Competition Bureau) to create a filing manual that would set out the details of the information to be reported and the format in which to file it.¹⁹ The Commission adopted the Quarterly Large Carrier Report in the 1997 *Benchmark Order*.²⁰ In that same year, the Commission adopted the Quarterly Foreign-Affiliated Carrier Report in the *Foreign Participation Order*.²¹

7 Section 43.61(a) currently requires all common carriers providing telecommunications services between the continental United States, Alaska, Hawaii, and overseas points, including offshore U.S. points, to file annual traffic and revenue reports for their international services.²² The current rule requires carriers to file their traffic and revenue information by July 31st, covering the preceding calendar year, and to correct any inaccuracies in their submissions that exceed 5 percent of their total reported traffic and revenues by October 31st. After the carriers file their data, the Commission staff reviews the submissions and prepares a consolidated report, the International Telecommunications Data Report, which it releases to the public.²³ The carriers' section 43.61(a) traffic and revenue data are generally filed on a non-confidential basis and are available to the public.²⁴ The report includes carrier-specific information as well as industry totals.

8. In the 2000 *IB Biennial Review Order*, the Commission amended section 43.61(c) to exempt CMRS carriers from filing the Quarterly Foreign-Affiliated Carrier Report because they have a *de minimis* amount of the switched-resale traffic and thus are unlikely to be able to distort traffic on affiliated routes.²⁵ The Commission declined to make other changes to the

¹⁸ Prior to 1992, section 43.61 had specified the individual services for which the carriers were required to report.

¹⁹ Federal Communications Commission, Common Carrier Bureau, Manual for Filing Section 43.61 Data In Accordance with the FCC's Rules and Regulations (rel. June 1995) (*Section 43.61 Filing Manual*). See 1992 *Section 43.61 Amendment Order*, 7 FCC Rcd at 1380, ¶ 9.

²⁰ *International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997) (*Benchmarks Order*).

²¹ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) (*Foreign Participation Order*), *recon.* 15 FCC Rcd 18158 (2000) (*Foreign Participation Reconsideration Order*).

²² 47 C.F.R. § 43.61(a).

²³ Federal Communications Commission, Wireline Competition Bureau, International Telecommunications Data. The Commission releases a consolidated International Telecommunications Data report for each calendar year. In this NPRM, we cite the report by reference to the calendar year of traffic and revenue data the report covers. For example, the International Telecommunications Data report that covers traffic and revenue information for the year 2002 is cited as 2002 *International Telecommunications Data*. The reports are available on the FCC website at <http://www.fcc.gov/wcb/iatd/intl.html>.

²⁴ As discussed more fully below in Section III.H.1, a few carriers have requested confidential treatment of their traffic and revenue data.

²⁵ 2000 *Biennial Regulatory Review Order - Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket 00-231, Report and Order, 17 FCC Rcd 11416, 11428-30, ¶¶ 28-31 (2002) (*2000 International Biennial Review Order*), *aff'd sub nom. Cellco Partnership d/b/a Verizon Wireless v. FCC & USA*, 357 F.3d 88 (D.C. Cir. 2004).

section 43.61 reporting requirements requested by some commenters in that proceeding. Specifically, it declined to eliminate the section 43.61(b) Quarterly Large-Carrier Report on the grounds that that report allows the Commission to detect deviations of traffic flows that could indicate anti-competitive behavior by foreign incumbents on a timely basis. The Commission also declined to exempt CMRS carriers from filing annual traffic and revenue reports, because it found that IMTS traffic and revenue information for CMRS carriers is important for monitoring trends in the IMTS industry.²⁶

9. In the *2002 ISP Reform NPRM*, we sought comment on whether current annual and quarterly traffic and revenue reporting requirements, along with other filing requirements, provide sufficient information to enable carriers to demonstrate possible anti-competitive behavior and permit Commission enforcement or whether additional reporting requirements are necessary.²⁷ In that proceeding, AT&T has argued that the section 43.61(b) reports are still required to monitor compliance with the International Settlements Policy (ISP).²⁸ Worldcom stated that the quarterly reports provide important information, but that information is often outdated by the time it is used.²⁹ In the *2004 ISP Reform Order*, we decided to defer decisions on possible changes to the section 43.61(b) reports to this proceeding.³⁰

10. **Circuit-Status Reports.** Section 43.82 requires all U.S. facilities-based international common carriers to file an annual report on the status of their circuits (Circuit-Status Report).³¹ Carriers are required to report, by March 31st of each year, the status of their international circuits on December 31st of the previous year.³² The rule requires carriers to identify the satellite, submarine cable, and terrestrial links they own (or lease) on December 31st of any given year and list the overseas geographical points that they serve using those circuits. The rule requires carriers to report the total number of active circuits and the total number of idle circuits. For the active circuits, carriers must identify the services for which they used each circuit. Section 43.82 delegates authority to the Chief of the International Bureau to issue a manual containing instructions for filing the report and the details of the information to be provided. Under the current *Section 43.82 Filing Manual*, the carriers must report circuit-use

²⁶ *Id.* at 11429-30, ¶ 31

²⁷ *International Settlements Policy Reform: International Settlement Rates*, IB Docket Nos. 02-324 and 96-21, Notice of Proposed Rulemaking, 17 FCC Rcd 19954, 19975, ¶ 37 (2002) (*2002 ISP Reform NPRM*). The International Settlements Policy (ISP) provides a framework under which U.S. carriers negotiate with foreign carriers to provide bilateral U.S.-international telecommunications services. There are three elements of the ISP that serve as conditions on U.S. carriers' entering operating agreements with a foreign carrier: (1) the foreign carrier must offer all U.S. carriers the same accounting rate and the same effective date for the offered rate ("non-discrimination"), (2) U.S. carriers are entitled to a share of the "return" traffic (traffic inbound to the United States) that is proportionate to the share of outbound traffic they carried to the foreign country ("proportionate return"), and (3) the foreign carrier and the U.S. carrier must divide the accounting rate evenly 50-50 for U.S.-inbound and outbound traffic ("symmetrical settlement rates"). See 47 C.F.R. § 43.51(e).

²⁸ AT&T Corp. comments in IB Docket No. 02-324 at 16, 19, 24, and 29 (filed Jan. 14, 2003), AT&T Corp. reply comments in IB Docket No. 02-324 at 5 and 15 (filed Feb. 19, 2003).

²⁹ Worldcom, Inc. comments in IB Docket No. 02-324 at 7-8 (filed Jan. 14, 2003).

³⁰ *International Settlements Policy Reform: International Settlement Rates*, IB Docket Nos. 02-324 and 96-21, First Report and Order, FCC 04-53 at ¶ 60 (rel. March 30, 2004) (*2004 ISP Reform Order*).

³¹ 47 C.F.R. § 43.82

³² *Id.*

information for the same list of overseas points and for most services that they report in their section 43.61(a) reports.³³ Section 43.82 reports, however, do not require carriers to report any traffic volumes or revenues.³⁴ The Commission staff reviews the carrier filings and issues an annual consolidated circuit-status report for the industry as a whole.³⁵

11. The Commission adopted the annual section 43.82 circuit-status reporting requirement in 1995.³⁶ The rule codified circuit-status reports the Commission had originally imposed as a condition on section 214 authorizations for international submarine cable systems dating back to the early 1970's.³⁷ The rule required all facilities-based international carriers to file circuit-status reports, reduced the frequency of the reports from monthly to annually, and reduced the amount of information to be submitted.³⁸ The Commission also reduced the frequency of the circuit-addition reports for private-line resale carriers from semi-annually to annually,³⁹ and exempted non-dominant facilities-based carriers from the requirement to file circuit-addition reports.⁴⁰ The Commission declined to grant a request for confidential treatment for carrier section 43.82 circuit-status reports, but provided that carriers could file a properly supported request for confidential treatment under the Freedom of Information Act.⁴¹

12 **Toll Division Reports.** Section 43.53 requires carriers that provide international telegraph service "to file a report with the Commission within thirty (30) days of the date of any arrangement concerning the division of total telegraph charges on such communication other than transiting."⁴² Section 43.53 also requires international telegraph carriers to file any subsequent changes to those arrangements within 30 days.⁴³ The Commission last reviewed the rule in 1986 and 1987. At that time, the Commission amended the rule to substitute the word "toll" for "telegraph," to require carriers to file division of tolls agreements for voice and data services as well as telegraph services, and to add language to specify which toll information the

³³ Federal Communications Commission, International Bureau, Manual for filing Section 43.82 Circuit Status Data in Accordance with the FCC's Rules and Regulations (*Section 43.82 Filing Manual*) (available on the FCC website at www.fcc.gov/ib/pd/pf/csmanual.html)

³⁴ 47 C.F.R. § 43.82(a). See also *Section 43.82 Filing Manual* at 6, Section 1 (A)

³⁵ The annual circuit status reports are available on the FCC website at <http://www.fcc.gov/ib/pd/pf/csmanual.html>

³⁶ *Rules for the Filing of International Circuit Status Reports*, Report and Order, CC Docket No. 93-157, 10 FCC Rcd 8605 (1995) (*1995 Circuit Status Report Order*)

³⁷ *Id.*

³⁸ *Id.* at 8606, ¶ 6

³⁹ *Id.* at 8606-7, ¶ 11. See also 47 C.F.R. § 63.23(e)

⁴⁰ *1995 Circuit Status Report Order*, 10 FCC Rcd at 8607, ¶ 16. In 2003, 79 carriers filed Section 43.82 circuit-use data. *International Bureau Releases 2002 Year-End Circuit Status Report for U.S. Facilities-Based International Carriers, Capacity Use Shows Modest Growth*, at 2, rel. Dec. 24, 2003 (*2002 Circuit Status Report*). The report is available on the FCC website at <http://www.fcc.gov/ib/pd/pf/csmanual.html>

⁴¹ *1995 Circuit Status Report Order*, 10 FCC Rcd at 8607, ¶ 16

⁴² 47 C.F.R. § 43.53(a)

⁴³ 47 C.F.R. § 43.53(b)

carriers are required to file ⁴⁴

B. 2002 Biennial Regulatory Review Proceeding

13 Section 11 of the Communications Act of 1934 (Act)⁴⁵ directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under that Act that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be "no longer necessary in the public interest."⁴⁶ In particular, the Act directs the Commission to determine whether any such regulation is no longer necessary "as the result of meaningful economic competition between providers of such service."⁴⁷

14. As part of our 2002 biennial regulatory review,⁴⁸ we released a staff report prepared by the International Bureau that set forth various recommendations for reviewing our rules regarding the provision of international telecommunications.⁴⁹ The Bureau reviewed rules that fall within and outside the scope of section 11 and made recommendations based not only on changes in the competitive level of the marketplace, but also based on public interest reasons other than the development of competition in the U.S.-international services market.⁵⁰ In the *2002 IB Biennial Review Staff Report*, the Bureau recommended that we undertake a proceeding to review those portions of Part 43 of the Commission's rules relating to the reporting requirements of carriers providing U.S. international services ⁵¹

15 Several parties commented in the biennial review proceeding on the continued need for sections 43.53, 43.61, and 43.82.⁵² Three commenters, the Cellular Telephone and

⁴⁴ See *Amendment of Sections 43.51, 43.52, 43.53, 43.54 and 43.74 of the Commission's Rules to Eliminate Certain Reporting Requirements*, CC Docket 85-346, Notice of Proposed Rule Making, 102 FCC 2d 531, n. 3 (1985), Report and Order, 1 FCC Rcd 933, 935-36 (1986). In 1987, the rule was amended to reinsert the word "continental" before United States and to exclude transiting traffic. *Implementation and Scope of the International Settlements Policy for Parallel International Communications Routes*, CC Docket 85-204, Order on Reconsideration, 2 FCC Rcd 1118, 1120, 1121-22, 1124 (1987)

⁴⁵ 47 U.S.C. § 161 (2000)

⁴⁶ 47 U.S.C. § 161(a)(1)

⁴⁷ 47 U.S.C. § 161(a)(2)

⁴⁸ See *2002 Biennial Regulatory Review*, GC Docket No. 02-390, Report, 18 FCC Rcd 4726 (2003), *aff'd sub nom. Celco Partnership d/b/a Verizon Wireless v. FCC & USA*, 357 F.3d 88 (D.C. Cir. 2004)

⁴⁹ *International Bureau, Federal Communications Commission, Biennial Regulatory Review 2002*, IB Docket No. 02-309, GC Docket 02-390, 18 FCC Rcd 4196 (2003) (*2002 International Bureau Biennial Review Staff Report*)

⁵⁰ *Id.* at 4197 and *in passim*.

⁵¹ *Id.* at 4210, 4232. We will consider the other recommendations in the *2002 International Bureau Biennial Review Staff Report* regarding international section 214 authorizations in a separate proceeding. See *id.* at 4211, 4236-39.

⁵² See *Commission Seeks Public Comments in 2002 Biennial Regulatory Review of Telecommunications Regulations within the Purview of the International Bureau*, Public Notice, IB Docket No. 02-309, 17 FCC Rcd 18929 (2002). Parties also commented on the continued need for other regulations within the purview of the International Bureau in response to the Public Notice. See *2002 International Bureau Biennial Review Staff Report*, 18 FCC Rcd 4196.

Internet Association (CTIA), Verizon 214 Licensees (Verizon), and the Rural Cellular Association (RCA), filed comments seeking elimination of the section 43.61 annual traffic and revenue report and the section 43.82 circuit-status report.⁵³ Cingular Wireless LLC (Cingular) filed comments requesting that the Commission exempt CMRS carriers from filing the annual report under section 43.61(a).⁵⁴ AT&T Telecommunications (AT&T), on the other hand, opposed the CTIA, RCA and Verizon proposal to repeal section 43.61.⁵⁵ CTIA and RCA also urged the Commission to eliminate section 43.53, which requires carriers to file reports on the division of international toll communications.

16. Based on its review of the rules and various comments, the International Bureau recommended that the Commission undertake a proceeding to review the sections 43.61 and 43.82 reporting requirements and to repeal section 43.53.⁵⁶ The Bureau recommended that, although the traffic and revenue reports required by section 43.61 and the circuit-status report required by section 43.82 continue to be useful to the Commission and the industry, we should consider modifying the reporting requirements to lessen the burdens placed on U.S. international carriers, and the administrative burdens on the Commission, while maintaining and enhancing the benefits that the reports provide.⁵⁷ The Bureau also recommended that, in light of market changes and the decreasing use of telegraph services, we should repeal section 43.53, which requires the reporting of the division of international toll and telegraph communication charges.⁵⁸

III. DISCUSSION

A. Purpose of Reporting Requirements

17 The Commission has a responsibility under the Communications Act to make available, among other things, world-wide communications with adequate facilities at reasonable charges.⁵⁹ Our primary goal underlying the reporting requirements for international carriers has been and continues to be the protection of U.S. consumers and carriers from potential harm caused by instances of insufficient competition caused by the exercise of market power by foreign incumbent carriers. The Commission's goals in regulating the U.S.-international marketplace have been (1) to promote effective competition in the global market for communications services; (2) to prevent anticompetitive conduct in the provision of international services or facilities; and, (3) to encourage foreign governments to open their communications markets.⁶⁰ Our ability to respond to failures in the U.S.-international market depends upon our having adequate information about the market.

⁵³ Cellular Telephone and Internet Association, Petition for Rulemaking at 23-24 (filed July 25, 2002), Verizon Telephone Companies comments in IB Docket 02-309 at 9-10 (filed Oct 18, 2002), RCA Reply in WT Docket 02-310 at 6 (filed Nov 4, 2002)

⁵⁴ Cingular Wireless LLC comments in IB Docket 02-309 at 12-13 (filed Oct 18, 2002)

⁵⁵ AT&T Corp. reply comments in IB Docket 02-309 at 24 (filed Nov 4, 2002) (AT&T Reply).

⁵⁶ *2002 International Bureau Biennial Review Staff Report*, 18 FCC Rcd at 4211, 4232.

⁵⁷ *Id*

⁵⁸ *Id*

⁵⁹ 47 U.S.C. § 151

⁶⁰ *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873 (1995) (*Foreign Carrier Entry Order*) at 3877, ¶ 6

18 The Commission uses the information provided by the traffic and revenue reports and the circuit-status report to ensure compliance with our international rules and policies. We understand that carriers and other entities outside the Commission, such as other government agencies, international organizations, and academia, also use the information. Other government agencies use the information in merger analyses and negotiations with foreign countries.⁶¹

19 The international telecommunications industry has changed greatly in the years since the Commission last reviewed these reporting requirements. One catalyst for this change was the implementation of the World Trade Organization (WTO) Basic Telecom Agreement in 1997.⁶² The Commission has undertaken a number of actions to liberalize and streamline its market access policies in response to the U.S. commitments made pursuant to the WTO Basic Telecommunications Agreement. In addition, competition has increased in many foreign markets⁶³

20. There have been significant changes in the U.S.-international market. For example, minutes of use have grown significantly while revenues have been stable or declined. End-user billed revenues for IMTS decreased from \$14.4 billion in 1995 to \$9.3 billion in 2002, while minutes increased from 15.9 billion in 1995 to 35.1 billion in 2002.⁶⁴ Private line revenues have continued to climb, from \$514 million in 1995 to \$988 million in 2002,⁶⁵ and now represent about 11 percent of U.S.-international revenue⁶⁶ Other services, however, have declined

⁶¹ Both the Commission and the Department of Justice (DOJ) use the annual traffic and revenue information in our respective analyses of proposed mergers. We use the information to determine the effect of specific transactions between carriers on competition. DOJ uses the information to determine whether a specific merger proposal will likely benefit consumers or cause anti-competitive harm. In these analyses, the Commission and DOJ have used the levels of traffic on certain routes reported by each facilities-based carrier as an indication of each carrier's approximate market share on those routes.

⁶² See *Foreign Participation Order*, 12 FCC Rcd 23,891, *Foreign Participation Recon Order*, 15 FCC Rcd 18,158.

⁶³ According to *TeleGeography*, the number of international carriers worldwide has grown from approximately 587 in 1997 to 4,030 in 2001, representing almost a 600 percent increase. *TeleGeography 2002 Global Traffic Statistics and Commentary*, TeleGeography, Inc. (October 2001) (*Telegeography*) *Id.* at 17. (We note, however, that the number of competitors does not necessarily indicate the level of competition in a market.) Moreover, of 50 countries providing market information, competition has developed in more than 20 countries that previously had closed international markets. These countries had reported only one authorized international carrier in 1997, and subsequently reported additional carriers in 2001. *Telegeography* at 19.

⁶⁴ *2002 International Telecommunications Data* at 1; *Trends in Telephone Service*, August 2003, Table 6-3. Both reports are available on the FCC website at <http://www.fcc.gov/wcb/iatd/stats.html>.

⁶⁵ *2002 International Telecommunications Data* at 1, *Trends in Telephone Service*, August 2003, Table 6-3.

⁶⁶ See *2002 International Telecommunications Data*, Figure 1.

substantially for example, revenues for telegraph service fell from \$6 million in 1995 to less than \$500,000 in 2001.⁶⁷

21 While IMTS continues to be the dominant international telecommunications service, it increasingly is being affected by other telecommunications services. For example, international private leased circuits are accounting for a growing number of total overseas circuits. This is due both to the use of such circuits for private, internal communications and for the provision of other services, most notably the backbone transmission for the provision of Internet services. IMTS is also being provided in new ways other than the traditional pattern in which carriers in the originating and terminating countries cooperate in the handling of calls and divide the tolls for such traffic, in accordance with our International Settlements Policy. Increasingly, carriers are relying on non-traditional arrangements such as hubbing, where the originating carrier enters into an agreement with the carrier in a third country that "reoriginates" the traffic and settles with the destination country at a lower rate. Another non-traditional way that carriers can terminate IMTS traffic in the destination country at a rate lower than the ISP settlement rate is the resale of private lines, where a carrier can act as its own overseas correspondent to terminate traffic at a rate lower than the traditional ISP settlement rate. Further, many carriers now rely on what is known as the "spot market," where they choose the carrier that charges the lowest rate for terminating traffic in the destination country.

22. Technological changes since the mid-1990s have also affected the U.S.-international service market. For example, in recent years, a growing number of carriers have begun to provide an international switched voice service, voice over internet protocol (VoIP), that provides essentially the same function to end users as IMTS, but that uses the Internet rather than traditional voice-grade IMTS circuits to carry the calls.⁶⁸ Improvements in the packet-switched transmission technology underlying the internet now allow providers of VoIP to offer international voice transmission of reasonable quality at a price lower than current IMTS rates. The number of IMTS customers using VoIP for international calling appears to be growing rapidly.⁶⁹ For example, one provider of VoIP has stated that VoIP now accounts for more than 10 percent of international switched voice calls and predicts that, by 2010, it will account for 100 percent of such calls.⁷⁰ Also, newer technologies have allowed for greatly increased capacity for international services. For example, the reported capacity in submarine cables built since 1995 exceeds the total previously existing capacity by one hundred and ten fold.⁷¹ Further, almost all of these new submarine cables are now being built on a non-common carrier basis.

⁶⁷ *Trends in Telephone Service*, August 2003, Table 6.1

⁶⁸ U.S. international common carriers also use IP technology to transmit some of their IMTS traffic after it crosses their switch. These carriers include such traffic in their section 43.61 traffic and revenue reports.

⁶⁹ See *Telegeography* 2003 at 76, 78.

⁷⁰ Thomas Evslin, Chairman, ITXC Corp., Speech before the SuperComm Convention, Atlanta Georgia, June 2, 2003, reported in *Communications Daily*, at page 9, June 3, 2003. ITXC is a provider of international switched VoIP calls.

⁷¹ In 1995, there were 285,390 64 Kbps-equivalent circuits on submarine cables. By 2002, the available capacity had grown to 31 million 64 Kbps-equivalent circuits. *2002 Circuit Status Report* at 34, Table 7.

23 Below, we seek comment on the effect of the changes in the U.S.-international telecommunications market on the need for the Commission to collect data on the market and the manner in which we collect data. We request comments on whether and to what extent there is a continuing need to collect information and what information we should continue to collect.

B. Annual Traffic and Revenue Reports

1. Purpose of the Reports

24 The information in the annual traffic and revenue reports has enabled the Commission to analyze the U.S. international telecommunications market. The Commission uses the information to track market developments, to determine the competitiveness of each service and geographical market (e.g., an international route), to formulate rules and policies consistent with the public interest, to monitor compliance with those rules and policies, and to gauge the competitive effect of Commission decisions on the international market. The country-by-country information we collect under section 43.61 allows us to tailor our policies to respond to the market developments on a particular route.

25 The annual traffic and revenue reports also provide a means by which to determine whether a U.S. carrier's foreign-carrier correspondents are engaging in anti-competitive conduct. Many of the U.S.-international carriers' overseas correspondents continue to have market power in their home markets⁷². That is, they control bottleneck facilities or otherwise have market power and the ability to distort competition in that market. The Commission uses the section 43.61(b) quarterly traffic and revenue reports to monitor traffic flows to detect the existence of anti-competitive behavior that would harm U.S. customers.

26 We also use the traffic and revenue information to measure the progress of our accounting-rate benchmark policy and the ISP. For many years, the Commission has sought to bring the prices that U.S.-international carriers pay to their foreign-carrier correspondents for settling U.S.-international telecommunications traffic closer to cost. For example, in the 1997 *Benchmarks Order*, the Commission set "benchmark rates" that represent the maximum accounting settlements rates for terminating outbound U.S.-international traffic that could presumptively be considered just and reasonable. We use the section 43.61 annual traffic revenue reports to monitor whether U.S. carriers' settlement rates are in fact declining.

2. Improvements to the Traffic and Revenue Reports

27 We believe, however, that the annual traffic and revenue reporting requirements, as well as the procedures under which the reports are filed, can be modified to improve the value of the data reported. The growth and increasingly competitive nature of the international telecommunications market since we last reviewed the section 43.61(a) reports has rendered some information currently reported less important and, in some cases, has rendered information

⁷² See Public Notice, *The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers That Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, 18 FCC Rcd 11073 (IB 2003).

not currently reported more important. We discuss below a number of ways that we believe the annual traffic and revenue report can be improved. We seek comment on these possible changes as well as alternative means to improve and simplify the reporting requirements.

28. **Number of Messages.** We propose to eliminate the requirement that carriers report the number of IMTS messages they handle. At present, carriers are required to report each year the number of messages (i.e., calls) they handle to each overseas country, the number of minutes of calls, and the revenues associated with those minutes. International carriers charge their customers by the number of minutes (or fractions of minutes) the customer uses. Similarly, U.S. carriers settle with their foreign correspondents on the basis of the number of minutes of traffic each handles for the other. We believe that reporting the number of minutes of telephone traffic should provide the information necessary to achieve the purposes of the traffic and revenue reports, and thus propose to eliminate the requirement to report the number of messages. We seek comment on this proposal.

29. **Reports for Off-Shore U.S. Points.** We propose to eliminate the requirement that carriers report as international traffic any traffic between a U.S. domestic point and an off-shore U.S. point or between off-shore U.S. points as those terms are defined in the *Section 43.61 Filing Manual*. The filing manual requires carriers to report traffic they carry between any domestic U.S. point and any off-shore U.S. point. The filing manual defines "off-shore U.S. points" to include "U.S. possessions" that include a number of diverse islands.⁷³ Historically, off-shore U.S. points were treated as international rather than domestic, because carriers served those points by using the same international cable, terrestrial, and satellite facilities they used to serve foreign countries in the same ocean region.⁷⁴ For this reason, carriers charged customers rates for service to such off-shore U.S. points based on the traditional pricing structure that they used for pricing service to international points

30 Over the years, the Commission has gradually integrated off-shore U.S. points into the domestic U.S. pricing structure. Because service between domestic U.S. points and off-shore U.S. points and service between two off-shore U.S. points are settled under domestic U.S. settlements mechanisms, the international settlements process does not apply. Furthermore, the Commission has jurisdiction under section 3(51) of the Communications Act in the points that fall within the definition of "off-shore U.S. points."⁷⁵ As a result, the Commission has direct jurisdiction over both ends of all communications between and among domestic U.S. points and off-shore U.S. points. Customers of carriers that live within the off-shore U.S. points that have a complaint about the price or service offered by a carrier can file a complaint under the Communications Act. Accordingly, we propose that carriers no longer report as international

⁷³ *Section 43.61 Filing Manual* at 7. Included in the definition of U.S. possessions are points such as American Samoa, Guam, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, and Midway Atoll, Navassa Island, the Northern Mariana Islands, Palmyra Atoll, the U.S. Virgin Islands, and Wake Island.

⁷⁴ Amendments to the Communications Act that Congress adopted in 1943 (since repealed), and codified as Section 222 of the Act, provided that communications within the Continental United States, Alaska, Canada and the islands of St. Pierre and Miquelon (two territories within North America owned by France) should be considered as "domestic." All other off-shore U.S. points were considered to be international.

⁷⁵ Section 2 of the Act states that the Act applies to all "interstate or foreign communication by wire or radio . . . which originates and/or is received within the United States." 47 U.S.C. § 152. Section 3(50) of the Act defines "United States" as "the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone." 47 U.S.C. § 153(50).

traffic any traffic between the continental United States and an off-shore U.S. point or between two off-shore U.S. points as those terms are defined in the *Section 43.61 Filing Manual*.⁷⁶

31 Elimination of reporting on off-shore U.S. points should simplify the information that the carriers must submit in their traffic and revenue reports. We note that service between any of these off-shore U.S. points and a foreign point remains international in character and propose to require carriers to continue to report such traffic. We seek comment on this proposal.

32. **Pure Resale Service.** We seek comment on whether to establish a \$5 million revenue threshold for a carrier to file annual traffic and revenue reports for pure resale services.⁷⁷ Under this proposal, a carrier with less than \$5 million in revenue from pure resale international service for the preceding year would not have to file its international pure resale traffic and revenues with the Commission.

33 Although there are many pure resellers of IMTS that generate few revenues, pure resellers as a class represent a significant and growing portion of the total IMTS market. In 1992, 86 carriers were engaged in pure resale of IMTS, reporting 565 million minutes of traffic and \$511 million in revenues.⁷⁸ By 2002, the number of carriers reporting revenues for pure resale IMTS service increased to 706, reporting traffic of 27.4 billion minutes and revenues of \$4.9 billion.⁷⁹ IMTS pure resellers also represent a significant portion of the business of the facilities-based carriers from which they buy wholesale minutes of international telephone calls. In the early 1990's, pure resellers accounted for approximately 5 percent of the IMTS minutes provided by facilities-based carriers. In 2002, pure resellers accounted for approximately 70 percent of the IMTS minutes billed by facilities-based and facilities-resale carriers.⁸⁰ Given the significance of pure resale in the IMTS market, we tentatively conclude that the Commission should continue to monitor the traffic and revenues of pure resale carriers. We seek comment on this tentative conclusion.

34 We find, however, that we can obtain an accurate picture of the international resale market such that we can identify the likelihood of anti-competitive conduct, while providing regulatory relief to small carriers. Many pure resale carriers have very low IMTS traffic volumes and revenues. For example, 706 carriers reported traffic and revenue from pure resale IMTS service in 2002.⁸¹ Of those, 316 carriers reported pure resale IMTS revenues of less than \$10,000; 560 reported pure resale IMTS revenues of less than \$500,000; and 584 reported

⁷⁶ We also tentatively conclude that carriers need no longer include in their circuit-status reports circuits between the continental United States and a U.S. off-shore point. See ¶ 59 *infra*.

⁷⁷ "Pure resale services are switched services that are provided by reselling the international switched services of other carriers. Pure resale services are not provided to the public over the reseller's international channels of communications. Pure resale carriers may own domestic switches and circuits, but rely on other carriers to carry switched traffic between the United States and foreign points." *Section 43.61 Filing Manual* at 16.

⁷⁸ Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, Trends in the International Telecommunications Industry, Table 28 (rel. Apr. 3, 2001).

⁷⁹ 2002 *International Telecommunications Data*, Table D.

⁸⁰ *Id.*, Tables A-1 and D. The percentage was derived by dividing the 24.7 billion minutes of resale IMTS by the 35.1 billion minutes of IMTS from facilities-based and facilities-resale carriers.

⁸¹ *Id.*, Table D at 13 (Pure Resale Services).

pure resale IMTS revenues of less than \$1 million⁸² Based on the 2002 data, the 584 carriers that reported less than \$1 million in revenues collectively accounted for less than 1 percent of total reported U.S. IMTS resale revenues for 2002. Stated another way, the revenue information provided by the remaining 122 larger pure resale IMTS carriers accounts for more than 99 percent of the pure resale IMTS market. Using a \$2 million threshold would remove an additional 32 carriers, so that 90 carriers would file revenue information that would comprise 98 percent of the IMTS resale revenues. With a \$5 million threshold, 54 carriers would file revenue information that would comprise 96 percent of the IMTS resale revenues.

35 We propose to establish a \$5 million revenue threshold to determine which carriers must file traffic and revenue information for their pure resale services. We seek comment on this proposal. As discussed above, in 2002 use of such a revenue threshold would have alleviated 652 carriers from having to file traffic and revenue information for pure resale services, but would still have provided the Commission with information on 96 percent of the pure resale revenues. Commenters are requested to address whether a \$5 million threshold will provide the level of statistical significance needed to have an accurate picture of the market for regulatory purposes, and, if not, what would be an appropriate revenue threshold level and why.

36 We also seek comment on whether all carriers that hold a section 214 authorization should file a one-page summary report stating whether they provided international service the preceding year and providing up-to-date contact information. We seek comment on how often such a report should be filed; for example would filings every two years (in even numbered years) be sufficient. Currently, we do not know if a carrier is providing international service unless it files traffic and revenue reports. If we adopt a revenue threshold for filing traffic and revenue reports, there will be a number of carriers that are providing international service that will not be filing traffic and revenue reports. Consequently we will not know which authorized carriers are actually providing service. The use of a summary report would assist us in keeping track of who is offering service and how to contact them, and would be a significant reduction in the data that the majority of international section 214 authorized carriers are required to file with the Commission. The summary report could also assist us in the administration of the scarce international telephone signaling point codes used with Signaling System 7 telephone switches.⁸³

⁸² *Id.*, Table D at 1-13 (Pure Resale Services)

⁸³ Some of the carriers that apply for authorization under section 214 also request assignment of an international signaling point code. *See* International Telecommunication Union, Telecommunications Sector (ITU-T), Recommendation Q 708, Assignment Procedures for International Signalling Point Code, Series Q, Switching and Signalling Specifications of Signalling System No. 7 – Message Transfer Part (MTP) (revised March 15, 1999). Recommendation Q 708 defines a signaling point code as a code that defines a point where switching occurs or where switching signals are transmitted or received. Such signaling points are within a Signaling System 7 switch. For this reason, only carriers that operate their own switch would need a signaling point code. The supply of signaling point codes available for use in the United States under Recommendation Q 708, however, is limited to less than 500. As a result, code assignments are conditional upon their being used within one year lead time, so that the Commission can reassign unused codes to another carrier. Currently, to determine whether a carrier has actually implemented a code assignment, the staff must contact each carrier that does not file a traffic and revenue report. The summary report would elicit that information in a simple, non-burdensome way.

37. This report, which filers could submit via the Commission website, would require the carrier to identify itself and to state whether it has provided international service during the preceding year. The form would also ask the carrier to update the contact information it supplied with its section 214 application, and to certify that the information provided is correct. To the extent that the proposed summary report is placed on the Commission's website, it could be made interactive so that a carrier could enter its information directly into the Commission's computer without having to download it or obtain a paper copy. The attached Appendix C includes a staff recommendation for a new schedule to implement a summary report. Proposed Schedule 1 shows the staff's recommendation as to the kind of information a carrier would submit. We seek comment on whether to implement a summary report and on the staff's proposed Schedule 1. We also seek comment on alternative approaches that would serve the purposes discussed above.

38. **Miscellaneous Services.** We seek comment on whether to establish a \$5 million revenue threshold to determine which miscellaneous services a carrier must report in its annual traffic and revenue reports. Under this proposal, carriers would not report miscellaneous services with less than \$5 million in revenue.

39. Section 43.61(a) requires all carriers to report their traffic and revenues "for each and every" international service they provide, regardless of their traffic volumes or revenues.⁸⁴ The reporting of miscellaneous services allows us to get a more complete picture of the types of services being offered in the market and their relative size. The reporting of miscellaneous services shows us when new services are being offered as well as when services are declining. It also helps to ensure the integrity of the data that is filed by requiring carriers to account for all of their traffic and revenue.

40. In 2002, nine carriers filed revenue information for four miscellaneous services: frame relay/ATM, virtual private line, packet switching, and occasional television.⁸⁵ Sprint reported two miscellaneous services and the other carriers each reported only one miscellaneous service. The retained revenues for the services for all U.S. carriers ranged from over \$93.6 million for frame relay/ATM to \$5.8 million for virtual private line.⁸⁶ For individual carriers, the largest revenue was reported by Sprint for frame relay/ATM (\$93.6 million), and lowest was International Telnet, Inc. with \$8,500 for packet switching.⁸⁷

41. We propose to establish a \$5 million revenue threshold for which miscellaneous services a carrier must report. We find that such a revenue threshold would allow us to obtain information on miscellaneous services that may have a significant impact on the international telecommunications market, but relieve carriers from filing on smaller services. In 2002, the use of a \$5 million revenue threshold would have resulted in two carriers filing information on two

⁸⁴ 47 C.F.R. § 43.61(a)(1)

⁸⁵ 2002 *International Telecommunications Data*, Table C

⁸⁶ *Id.*, Table C1

⁸⁷ *Id.*, Tables C5, C8

different services.⁸⁸ A revenue threshold would, therefore, effectively eliminate the requirement to report many miscellaneous services. We seek comment on this proposal.

42 As an alternative, should the Commission exempt certain miscellaneous services from the reporting requirement regardless of the revenue generated by that service? If so, which miscellaneous services should be reported and which ones should be exempted, and why? Should the Commission exempt certain services in addition to establishing a threshold for miscellaneous services that it requires to be continued to be reported?

43 **Staff Recommendations to Improve the Reporting Requirements.** Attached to this Notice as Appendix C is an International Bureau and Wireline Competition Bureau staff recommendation that contains specific proposals for simplifying the traffic and revenue information the carriers report and a proposal to gather information that is more relevant to current international market conditions. The staff recommendations concern the detailed procedures used by carriers in filing their traffic and revenue data and circuit-status information that are contained in the filing manuals for the reports. The comments received on these recommendations will assist the staff in preparing an updated filing manual.⁸⁹

44. The staff proposes to eliminate the use of the twelve separate billing codes as set out in the *Section 43.61 Filing Manual*, as amended by Public Notices.⁹⁰ The staff also proposes a set of schedules for simplifying reporting of the traffic and revenue and circuit-status information. Proposed Schedule 1 is a summary report that all carriers would complete. Schedules 2 through 7 would replace the reporting requirements under existing section 43.61 and the filing manual and set out the annual traffic and revenue data that carriers would submit. Schedule 8 replaces the reporting requirements under section 43.82 and the *Section 43.82 Filing Manual* and sets out the capacity data that carriers would submit. As explained in Appendix C, the proposed schedules would make a number of changes in the reporting requirements. The staff also proposes to change the format in which the reports are filed.

45. We seek comment on the proposed schedules developed by the staff and other changes to the reporting requirements discussed in Appendix C. Additionally, we seek comment on specific issues and questions raised by the staff recommendations. We also seek comment on

⁸⁸ In 2002, France Telecom Long Distance USA, LLC had retained revenues of \$5.8 million for virtual private line service and Sprint had retained revenues of \$163 million for frame relay/ATM and \$16 million for packet switching. See *id.* Tables C2-C11. Under the proposal Sprint would be required to report its revenues for Frame Relay/ATM service, but would not be required to report its revenues of \$2.4 million for packet switching since they are below the \$5 million revenue threshold.

⁸⁹ A draft of any updated filing manual will be released for public comment before it is adopted.

⁹⁰ See *Manual for Filing Section 43.61 Data in Accordance with the FCC's Rules and Regulations* (rel. June 8, 1995) (*Section 43.61 Filing Manual*); *Clarification of Section 43.61 International Traffic Data Reporting Requirements*, Public Notice (rel. July 15, 1997) (*1997 43.61 PN*), *Clarification of Section 43.61 International Traffic Data Reporting Requirements*, Public Notice, DA 98-1369 (rel. July 9, 1998) (*1998 43.61 PN*); *Further Clarification of Section 43.61 International Traffic Data Reporting Requirements*, Public Notice, DA 99-1332 (rel. July 7, 1999) (*1999 43.61 PN*), *Annual Section 43.61(a) International Telecommunications Traffic Reports Due by July 31, 2000*, Public Notice, DA 00-1526 (rel. July 7, 2000) (*2000 43.61 PN*), *Manual for Filing Section 43.82 Circuit Status Data in Accordance with the FCC's Rules and Regulations (Section 43.82 Filing Manual)*. The *Section 43.61 Filing Manual* and the Public Notices, as well as the reports, are available on the FCC website at <http://www.fcc.gov/web/iatd/intl.html>. The *Section 43.82 Filing Manual*, as well as the reports, are available on the FCC web-site at <http://www.fcc.gov/ib/pd/pf/csmanual.html>.

alternative or additional ways to simplify, clarify, and generally improve the reporting requirements. The staff will use comments that we receive on these proposals and the proposed schedules to develop the new filing manual for the annual traffic and revenue reports and the circuit-status reports, subject to our decisions on the issues that we raise for comment in this proceeding.

46 **Filing Date.** We seek comment on whether to change the date by which carriers are to file their annual traffic and revenue reports to May 1st.⁹¹ Carriers now file their data under section 43.61(a) in two stages, an initial filing by July 31st and any corrections by October 31st.⁹² After these filings, the Commission staff reviews the submitted data and issues the consolidated report to the public within a few months, depending upon the need to track down and correct anomalies in the data the carriers submit. Thus, by the time the information is publicly available, it is approximately a year out of date.⁹³ A long gap between the end of a reporting year and the availability of the consolidated report reduces the value of the reported information. The changes the staff proposes to the filing procedures for the traffic and revenue report and the simplification of the required data should allow the carriers both to file the information more expeditiously and to maintain the reliability of their data.

47 In setting a new filing date, we seek to balance the benefit from having more current data against the burden on the carriers to file earlier. The staff recommendation set forth in Appendix C proposes to simplify the data carriers are required to report in a number of ways. For example, carriers must currently report the actual minutes of use they carried during the reporting period (i.e., a calendar year) and the revenues, and settlements payments associated with those minutes.⁹⁴ The staff recommendation in Appendix C proposes to change the reporting instructions to direct carriers to report the minutes of use, revenues, and settlement payments that a carrier actually records during the reporting period.⁹⁵ Any settlement payments received in the subsequent reporting period would be reported in the year in which they were received. This change should allow the carriers to have complete information available on their international services as soon as they close their books for a calendar year and allow them to file their traffic and revenue information with the Commission earlier.

⁹¹ Carriers would also be required to file their circuit-status information on the same date. *See* Section III.F.2 *infra*

⁹² 47 C F R § 43.61(a), (a)(2)

⁹³ For example, for the most recent section 43.61 report, the carriers filed their data for the year 2002 on July 31, 2003, and filed corrections on October 31, 2003. The Commission staff reviewed the submissions and issued the consolidated report in March 2004.

⁹⁴ *See Section 43.61 Filing Manual* at Section 1.F (Measurement of Traffic and Revenues). The Commission adopted the current filing schedule (i.e., initial filing on July 31st and corrections on October 31st) in part because of the long delay between the time a customer makes a call and the date on which the carrier settles with its correspondent for that call (the carriers do not settle some calls until the following year).

⁹⁵ *See Appendix C, Schedule 2*. The current *Section 43.61 Filing Manual* requires carriers to report the actual traffic they carry during the reporting period and to record settlements payments associated with that traffic on an accrual, rather than on an actual-receipts, basis. *Section 43.61 Filing Manual*, Section 1(F) Measurement of Traffic and Revenues

48 In selecting a proposed date for filing traffic and revenue reports, we also seek to avoid conflicts with other Commission filing deadlines. For example, a May 1st date for filing the traffic and revenue reports would avoid the April 1st date on which the carriers are required to file their Form 499-A submissions. We seek comment on whether a month would give carriers sufficient time to prepare their submissions, without requiring them to prepare two reports at the same time.

49. The proposed simplifications should also improve the ability of the carriers to file reliable traffic and revenue information by May 1st, without the need to specify a particular date for filing corrections to their data. Any necessary corrections could be made during the staff review process. Should the staff find an anomaly in a carrier's reported data, the staff could contact the carrier and assist it in resolving the issue.⁹⁶ In addition, adoption of a revenue threshold would reduce substantially the number of traffic and revenue reports the staff must review and, thus, shorten the time the staff needs for conducting its review. A shortened review period should allow the staff to issue a consolidated report months earlier than is now possible. To the extent that this occurs, the traffic and revenue data would be significantly more timely than at present. Greater timeliness, in turn, should make the traffic and revenue data more useful to the Commission, the carriers, and other users. We seek comment on this proposed revised filing schedule.

C. Quarterly Reports for Large Carriers

50 We seek comment whether the public interest continues to require larger IMTS carriers to file quarterly traffic and revenue reports under section 43.61(b).⁹⁷ That section currently requires certain larger U.S.-international facilities-based and facilities-resale telephone carriers to file an additional, quarterly traffic and revenue report for any quarter in which its traffic exceeds one of the four specified thresholds.⁹⁸ Section 43.61(b) requires carriers that must file the quarterly report to submit traffic and revenue information for their switched, facilities-based telephone service and their switched, facilities-resale telephone service, using the same format that is specified in the filing manual for the annual traffic and revenue report.⁹⁹ The section requires the carriers to file the information within thirty days of the end of the quarter.¹⁰⁰ Carriers file their quarterly-report information on a confidential basis

⁹⁶ To ensure promptness in the release of the reports, we would expect carriers to respond to a staff query within 10 business days

⁹⁷ In the *2002 ISP Reform NPRM*, we sought comment on whether current annual and quarterly traffic and revenue reporting requirements, along with other filing requirements, provide sufficient information to enable carriers to demonstrate possible anti-competitive behavior and permit Commission enforcement. 17 FCC Rcd at 19975, ¶ 37. In the *2004 ISP Reform Order*, we decided to defer decisions on possible changes to the section 43.61(b) reports to this proceeding. *2004 ISP Reform Order* at ¶ 60

⁹⁸ 47 C.F.R. § 43.61(b). The four threshold criteria are set out in note 11, *supra*

⁹⁹ 47 C.F.R. § 43.61(b)(2)

¹⁰⁰ 47 C.F.R. § 43.61(b)(2)(ii). The rule requires carriers to file their information for January-March on April 30, their information for April-June by July 31st; their information for July-September by October 31st, and their information for October-December by January 31st of the following year

51 The Commission adopted section 43.61(b) in its 1997 *Benchmark Order*,¹⁰¹ because of a concern that liberalization of international simple resale (ISR) could lead to competitive distortions in the U.S. IMTS market through the introduction of one-way bypass.¹⁰² The Commission adopted a presumption that competitive distortion exists on a route whenever the ratio of outbound (U.S.-billed) IMTS traffic to inbound (foreign-billed) IMTS traffic increases 10 or more percent in two successive quarterly measurement periods.¹⁰³ The Commission adopted the quarterly 43.61(b) report to detail such distortions in traffic flows that would indicate the existence of one-way bypass. To lessen the burden on smaller IMTS carriers, the Commission exempted all but the largest IMTS carriers from the need to file the quarterly report.¹⁰⁴

52 In the six years since the Commission adopted the section 43.61(b) quarterly reporting requirements, the market for international telecommunications services generally has become more competitive. For example, most countries have brought their settlement rates within the Commission's benchmarks. This has reduced U.S. carrier settlements outpayments significantly. Additionally, in 1997, 69 Members of the World Trade Organization (WTO) made commitments to liberalize their telecommunications markets in varying degrees.¹⁰⁵ Implementation of those commitments has allowed U.S. carriers to enter the telecommunications markets in a number of other countries. While the international telecommunications market has become more competitive, U.S. international carriers have experienced anti-competitive abuses in some markets.¹⁰⁶ Indeed, AT&T has argued in the *2002 ISP Reform NPRM* proceeding that the section 43.61(b) reports are still required to monitor compliance with the ISP.¹⁰⁷ We seek comment on whether the concerns that prompted the creation of section 43.61(b) remain important. In particular, we request comment on whether competition in the global IMTS markets has grown to such a degree that the carriers are no longer concerned about the possibility

¹⁰¹ *International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806, 19919-20 (1997)

¹⁰² *Id.* at 19920. The term "one-way bypass" refers to a practice whereby a foreign carrier would require its U.S. carrier correspondents to carry IMTS traffic to that country under their negotiated operating agreement, and to settle such traffic under the traditional international settlement arrangements, but would send traffic to the United States under ISR. Because ISR traffic is settled outside the international settlements arrangements, U.S. carriers would pay their foreign carrier correspondents settlement payments for the outbound traffic but would receive no settlements payments for the inbound traffic, thus, increasing the U.S. carriers' settlements payments to the detriment of U.S. ratepayers.

¹⁰³ *Id.* at 19919.

¹⁰⁴ *Id.* at 19920.

¹⁰⁵ *Foreign Participation Order*, 12 FCC Rcd at 23893, ¶ 1.

¹⁰⁶ See *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief and Petition of WorldCom, Inc., for Prevention of "Whipsawing" on the U.S.-Philippines Route*, IB Docket No. 03-38, Order, 18 FCC Rcd 3519 (Int. Bur. 2003) (*2003 Philippines Order*).

¹⁰⁷ AT&T Corp. comments in IB Docket No. 02-324 at 16, 19, 24, and 29 (filed Jan. 14, 2003), AT&T Corp. reply comments in IB Docket No. 02-324 at 5 and 15 (filed Feb. 19, 2003). See also Worldcom, Inc. comments in IB Docket No. 02-324 at 7-8 (filed Jan. 14, 2003) (section 43.61(b) quarterly reports provide important information, but that information is often outdated by the time it is used).

of one-way bypass. We also seek comment on what, if any affect, our decision in the *2004 ISP Reform Order* to eliminate the ISR policy has on the need to collect quarterly traffic and revenue data from large carriers.¹⁰⁸

53. In commenting on the continued need for the 43.61(b) reports, parties should consider whether the Commission could get the same type of information derived from the quarterly reports through less burdensome measures. For example, because the information reported in the quarterly reports is the same as that reported in the annual traffic and revenue reports, we seek comment whether our proposal to improve the timeliness of the annual reports would allow them to serve the same function in detecting traffic distortions as the quarterly report.¹⁰⁹ Additionally, because the information in the quarterly reports tracks the information required in the 43.61(a) report, any changes we make to the section 43.61(a) report would automatically be reflected in the quarterly reports as well. For this reason, we need make no specific proposals to change the information to be reported under the Quarterly report.¹¹⁰ Rather, we seek comment on the continued need for section 43.61(b) reports.

54. We also seek comment whether there are other means by which we could accomplish the purposes of the quarterly reports through less burdensome measures. For example, we seek comment on whether IMTS carriers currently collect for their own purposes the same information that is submitted in the quarterly reports. If they do, it is possible that the individual carriers would be able to detect through their own data the kinds of traffic shifts the quarterly report was designed to show. Should a carrier notice such a shift, it could notify the Commission of a perceived problem. The Commission has authority to notify other U.S. carriers that a carrier has noticed an anomaly and to request those carriers to provide similar information from their own records.¹¹¹ It is possible such an approach would allow carriers to identify a competitive abuse faster than would the quarterly reports. Because an abuse that harms one U.S. carrier would also be likely to harm other U.S. carriers, it would seem to be in the interest of all the carriers to cooperate in responding to such a request. We note that a U.S. IMTS carrier recently notified us that one of its overseas correspondents had harmed it by diverting traffic to another carrier. We referred the issue to the other carriers, confirmed that there was a problem, and took prompt action to correct it.¹¹² We seek comment whether such an informal approach could replace the section 43.61(b) quarterly report.

¹⁰⁸ *2004 ISP Reform Order* at ¶ 31.

¹⁰⁹ We note, however, that the Commission's *2000 International Biennial Review Order* cited the existence of the section 43.61(b) report as the basis for its decision to remove the "benchmark condition" on foreign-affiliated U.S. carriers' provision of facilities-based private line service. 17 FCC Rcd at 11429-30, ¶ 31. The Commission's *Benchmark Order* had prohibited foreign-affiliated carriers from providing facilities-based private-line service until their foreign affiliates' settlement rates were at or below the relevant benchmark. *Benchmark Order*, 12 FCC Rcd at 19901-12, ¶¶ 207-231. The *2000 International Biennial Review Order* stated that the condition is no longer necessary because the section 43.61(b) quarterly report would provide notice of substantial declines in a carrier's switched service traffic and the Commission would be able to investigate the cause for such a change and bring an enforcement action if appropriate. 17 FCC Rcd at 11422-23, ¶ 15.

¹¹⁰ The proposed rule in Appendix B contains the current language for section 43.61(b).

¹¹¹ 47 U.S.C. § 218.

¹¹² *2003 Philippines Order*, 18 FCC Rcd 3519.

D. Quarterly Reports of Foreign-Affiliated Switched Resale Carriers

55 We also seek comment whether the public interest continues to require IMTS resellers affiliated with foreign carriers that possess market power to file quarterly reports under section 43.61(c). Section 43.61(c) requires U.S.-authorized IMTS resellers that are affiliated with a foreign carrier that (1) has sufficient market power at the foreign end of an international route to affect competition adversely in the U.S. market, and (2) collects settlement payments from U.S. carriers for traffic terminated in its home market, to file quarterly traffic and revenue reports on their affiliated routes.¹¹³ The rule requires the U.S. carrier to file the report for the route where its affiliate has market power and requires that the report provide all the switched-resale traffic and revenue information for that route. The rule requires eligible carriers to file the report within 90 days of the end of the quarter covered by the data.

56. The Commission adopted the section 43.61(c) quarterly report in the *Foreign Participation Order*, in which the Commission established rules and policies governing entry by foreign carriers seeking authorization under section 214 of the Act to provide international telecommunications services in the United States.¹¹⁴ Commenters raised a concern that entry of carriers that have market power in their home markets gives them further opportunities to game the settlements process by, for example, participating in a call turnaround scheme to turn U.S.-inbound calls of their foreign affiliates into U.S.-outbound calls. Call turnaround would generate additional settlements revenues for the foreign affiliate and increase the U.S.-carrier net settlements payments.¹¹⁵ Such diversions would increase the revenues of the affiliated U.S. carriers and increase the outpayment of the other U.S. carriers.¹¹⁶ The Commission recognized that foreign carriers have incentives to distort traffic flows, but did not find that foreign-carrier affiliation by itself would exacerbate potential distortions. Nor did it agree that, were such distortions to occur, U.S. market competition or U.S. subscribers would necessarily be harmed.¹¹⁷ The Commission, therefore, did not adopt a condition proposed by one U.S. carrier to apply to switched-resale services the condition the Commission had imposed in its *Benchmarks Order*. The proposed condition would have prohibited the U.S. affiliate of a foreign carrier from offering IMTS on a switched-resale basis until its foreign carrier affiliate had reduced its IMTS settlement rates to or below the Commission's prescribed benchmark.¹¹⁸ Rather, the Commission adopted a requirement for switched resellers affiliated with foreign carriers that possess market power to file a quarterly report of their switched-resale traffic and revenues on

¹¹³ 47 C.F.R. § 43.61(c). Section 43.61(c) states that, for purposes of this rule, the terms "affiliated" and "foreign carrier" are defined in section 63.09 of the rules, 47 C.F.R. § 63.09.

¹¹⁴ *Foreign Participation Order*, 12 FCC Rcd at 24014, ¶ 272. Specifically, the Commission adopted, as one factor in its public-interest analysis, a rebuttable presumption that applications from carriers from WTO Member countries do not pose concerns that would justify denial on competition grounds. 12 FCC Rcd at 23913, ¶ 50. With respect to applications from carriers that possess market power in non-WTO Member countries, the Commission maintained its policy of applying the "effective competitive opportunities" (ECO) test, under which the Commission would grant authorization under section 214 only when the applicant could show that its home country grants U.S. carriers equivalently effective competitive opportunities.

¹¹⁵ *Foreign Participation Order*, 12 FCC Rcd at 23983, ¶¶ 207-08.

¹¹⁶ *Id.* at 23983.

¹¹⁷ *Id.* at 23893-4.

¹¹⁸ *Id.*

the affiliated route¹¹⁹ The Commission stated that the report would allow the Commission to detect an attempt by U.S. carriers to engage in traffic distortion schemes on affiliated routes.¹²⁰ Subsequently, the Commission exempted CMRS carriers from filing the section 43.61(c) report¹²¹ The Commission concluded that CMRS carriers are only incidental providers of IMTS and that they have such a small market share that they could not effectively distort competition in the U.S. market¹²²

57. We seek comment whether the 43.61(c) quarterly reports continue to be necessary to detect in timely fashion any potential traffic distortion by switched resellers on routes where they are affiliated with foreign carriers that possess market power. The steps we are proposing herein to make the data from the section 43.61(a) annual traffic and revenue report more timely may lessen the need for a quarterly report. It is also possible that the carriers could use their own information to detect a problem and notify the Commission of their concern. The Commission could then ask other carriers to provide similar information to use in analyzing the issue. We seek comment on the continued need for section 43.61(c).¹²³ We also seek comment on whether *ad hoc* information requests could substitute for the section 43.61(c) quarterly report, as well as the section 43.61(b) quarterly report.

E. Circuit-Status Report

58 We seek comment on whether carriers should continue to file annual circuit-status information with the Commission. The annual circuit-status report required by section 43.82 provides the Commission, the carriers, and others information on how U.S. international carriers use their circuits. It provides the only information we receive on the number of available circuits and whether they are in use or are idle. The Commission uses the information from the circuit-status report to ensure that carriers with market power do not use their access to circuit capacity to engage in any anti-competitive behavior. Additionally, the Commission uses the information in our merger analyses to determine whether a proposed merger might result in an anti-competitive concentration of market power in the international transport market.¹²⁴ Furthermore, the Commission uses the report to implement the requirement in section 9 of the Communications Act that carriers pay annual regulatory fees for each of the bearer circuits they own.¹²⁵ We tentatively conclude that the circuit-status report continues to be useful in detecting anti-competitive behavior and should be retained. We seek comment, however, on whether there are alternative means for the Commission to obtain the information required for these activities. We also seek comment on the burden placed on carriers in providing the information required in this report, particularly in light of the changes that we describe below.

¹¹⁹ *Id.* at 23985 and 24014

¹²⁰ *Id.* at 23985

¹²¹ 2000 *International Biennial Review Order*, 17 FCC Rcd at 11429, ¶ 30

¹²² *Id.*

¹²³ The proposed rule in Appendix B contains the current language for section 43.61(c)

¹²⁴ For example, in approving the merger between Qwest and U S West, the Commission relied on the 1998 circuit status report to find that the proposed merger would not affect competition adversely in any input market that is essential for the provision of international services. Qwest Communications International Inc, and U S West, Inc. *Memorandum Opinion and Order*, 15 FCC Rcd 5376, 5399-5400, ¶ 47 (2000).

¹²⁵ 47 U.S.C. § 159

59. If we retain the circuit-status report, we propose that carriers no longer report circuits they use for service between the continental United States and off-shore U.S. points or between off-shore U.S. points. The filing manual for section 43.82 currently states that circuits between the continental United States and an off-shore point (e.g., between Alaska and Guam) are considered to be international and should be reported in the circuit-status report.¹²⁶ For the reasons we discussed above in connection with the annual traffic and revenue reports,¹²⁷ we find that we should no longer treat circuits between U.S. points as international circuits. We also propose to eliminate the annual circuit-addition reports that carriers that resell international private lines are now required to file under section 63.23(e) of the rules.¹²⁸

60. In addition, we seek comment on ways to make the information in the circuit-status reports more useful. For example, currently, only common carriers file circuit-status reports. At the time that the reporting requirement was adopted, most circuits were provided by common carriers and almost all submarine cables were common carrier facilities. Increasingly, however, many of the international submarine cable and satellite facilities that are used for providing international services are operated on a non-common-carrier basis.¹²⁹ The Commission has stated in the past that common carriers may purchase circuits in non-common-carrier facilities for use in providing their IMTS and other common-carrier services and that, in such cases, the circuits become common-carrier facilities. Still, there are substantial numbers of circuits in non-common-carrier cables that are idle and available for use by common carriers, non-common carriers, and end users. The non-common-carrier owners of these facilities do not, however, file circuit-status reports. Thus, the current rule makes a distinction based on regulatory classification even though the facilities are generally fungible and are often provided from the same platform (submarine cable or satellite facility). In addition, the current rule puts the Commission in the position of effectively treating substantially similar platforms under different regulatory structures for purely regulatory reasons. As a result, we do not have information on circuits operated on a non-common carrier basis and their potential effect on the availability of circuits for common-carrier services. Making that information available in the public Commission compilation of the section 43.82 reports would be helpful in assessing the levels of unused capacity and the need for new cable facilities. This information is also important for accurately assessing the market in analyzing proposed mergers or acquisitions, since we currently only receive information on part of the potential capacity in a market. Accordingly, we seek comment on whether non-common carriers should file circuit-status reports.

61. The Appendix C attached to this Notice contains a staff recommendation to revise the annual circuit-status report (proposed Schedule 8). The proposed schedule would retain the requirement that carriers report their circuit-use information on the basis of 64 Kilobit per second (Kbps) equivalent circuits, but dispense with the requirement that they report the additional circuits they derive from those 64 Kbps circuits. The schedule would also include a service

¹²⁶ Section 43.82 Filing Manual at Section 1 B (International Points used for Reporting Purposes).

¹²⁷ See ¶¶ 29-31 *supra*.

¹²⁸ 47 C.F.R. § 63.23(e). That rule requires all carriers that resell international private lines to file an annual report of any circuits they add during the reporting year. See Section 43.82 Filing Manual at 4, n. 3.

¹²⁹ Cable landing licensees and satellite licensees may request authority to provide service on either a common carrier or non-common carrier basis. See 47 C.F.R. §§ 1.767(a)(6), 25.114(c)(14).

category called "data services" to clarify how carriers should report their virtual private line services and other switched data services. Virtual private-line services do not fit neatly within the service reporting categories in the current *Section 43.82 Filing Manual*. Such services provide the same function as dedicated private lines. The new category proposed by the staff would provide a place for carriers to report facilities used for virtual private lines and other data services that do not use dedicated facilities. We seek comment on the staff recommendations.

F. Consolidation of the Traffic and Revenue Reports and the Circuit-Status Reports

1. Consolidation of the Reports

62. If and to the extent that we retain the reporting requirements, we propose to consolidate the existing sections 43.61 and 43.82 reports into one section of the rules. We note that both the section 43.61 and 43.82 reports require eligible carriers to report on most of the same services and to use the same list of countries. We find a benefit in combining the two reports in one rule section, and it appears likely that combining the rules would simplify carrier compliance with the reporting requirements. Consolidation of the reports would also make it easier for the Commission to ensure that future developments that would affect both reports are handled in a way to keep the two reports consistent. We seek comment on this proposal.

63. If we were to adopt the proposal to consolidate the two reporting requirements, carriers would still file their circuit-status information in a separate schedule. In the attached Appendix C there is a staff recommendation for a proposed Schedule 8. That proposed schedule sets out the staff's recommendation for modifications of the existing circuit-status report and the format under which carriers would report their circuit information. We seek comment on the staff recommendation and on alternative proposals or approaches.

2. Consolidated Filing Date

64. Currently, section 43.82 requires carriers to file their circuit-status information on March 31st. We have proposed to change the filing date for the traffic and revenue reports to May 1st. If we adopt the proposal to consolidate the traffic and revenue reports and the circuit-status reports into one rule, we must decide whether we should make the filing dates of the two reports consistent. We propose, therefore, to move the filing date of the circuit-status report to May 1st. We seek comment on this proposal.

3. Consolidated Filing Manual

65. We also believe that it would be less confusing to the carriers and less burdensome to have one consolidated filing manual for both reports. At present, section 43.61 and section 43.82 have separate filing manuals that use somewhat different definitions and require carriers to follow different formats in filing their information. To the maximum extent possible, the two reports should use the same list of international services and the same list of international service points. Consolidating both filing manuals would be the best way to ensure that the definitions and services used in both reports are and remain consistent over time. We request comment on this proposal.

66. In 1992, when the Commission codified section 43.61, the Commission made the rule general and delegated authority to the Chief of the Common Carrier (now the Wireline

Competition Bureau) to prepare a filing manual that would lay out the specifics of which carriers must file a report and what information they must provide.¹³⁰ Similarly, in 1995, when the Commission codified section 43.82, it delegated authority for preparing a filing manual for the circuit-status report to the Chief of the International Bureau.¹³¹ Because we propose to consolidate the traffic and revenue reports and the circuit-status reports, we propose that the Chief of the International Bureau should prepare the consolidated filing manual. We seek comment on this proposal and on alternative proposals or approaches.

G. Reports on Division of Tolls for Telegraph Carriers

67 We propose to eliminate section 43.53 of the rules.¹³² Section 43.53 requires a carrier that provides international telegraph service to file a report with the Commission within 30 days of the date of any arrangement with its foreign correspondents concerning the division of tolls for such telegraph communication, except for arrangements relating to transiting of telegraph traffic. The Commission adopted section 43.53 under the authority of section 211 of the Communications Act.¹³³ Because telegraph services have declined greatly over the years, it is not clear that the report required by section 43.53 continues to serve a useful purpose. The volume of telegraph traffic is sufficiently small that any anti-competitive abuses by foreign telegraph carriers are unlikely to have a negative effect on other services such as IMTS. The International Bureau recommended in the *2002 IB Biennial Regulatory Review Staff Report* that we eliminate this report. We agree. We seek comment on this proposal.

H. Other Issues

1. Confidentiality

68 Except for the quarterly reports under sections 43.61(b) and 43.61(c),¹³⁴ we generally have treated the information submitted pursuant to section 43.61 as non-confidential. The Commission, however, has allowed all carriers to submit on a proprietary basis specific pieces of information, such as information on transit traffic. The Commission has also granted carriers confidential treatment for circuit-status information submitted under section 43.82. Because we favor the free availability of information, we propose to continue our policy of making the carriers' annual traffic and revenue data available to the public. The staff recommendation to eliminate from the annual traffic and revenue report the requirement to report country-by-country data for certain types of IMTS traffic, such as traffic that originates in foreign points but is "reoriginated" by a U.S. carrier for termination in the ultimate destination country, should eliminate the basis for most claims of competitive sensitivity.¹³⁵ In the interest of public access to information, even where we grant a request to keep a particular piece of information confidential, we propose to include that information in the industry-wide totals we compile in the annual International Telecommunications Data Reports.

¹³⁰ 1992 Section 43.61 Amendment Order, 7 FCC Rcd at 1380, ¶ 9

¹³¹ 1995 Circuit Status Report Order, 10 FCC Rcd at 8607, ¶ 13

¹³² 47 C.F.R. § 43.53.

¹³³ 47 U.S.C. § 211

¹³⁴ Most carriers currently file their quarterly 43.61(b) and 43.61(c) reports with a request for confidentiality

¹³⁵ See Appendix C, Schedule 4

69 Also in the interest of free access to information, we seek comment on whether the circuit-status information the carriers submit under section 43.82 continues to be competitively sensitive or whether the carriers' circuit-status information could also be made available to the public. Carriers that want continued confidential treatment for this information should address why the information is competitively sensitive. It is possible that information that is competitively sensitive when it is submitted would not continue to be sensitive after time has passed. Carriers should comment on whether the circuit-status information could be released after one year or after two years.

70. In 2002, eleven facilities-based and facilities-resale carriers asked the Commission to keep their section 43.61 traffic and revenue information confidential. These eleven carriers collectively accounted for \$933 million of billed international revenues (IMTS, private line, and other international services). Although the Commission included the carriers' information in the aggregated traffic and revenue figures for the whole industry, the information was not apportioned between services or reported in the country-by-country tables as that might have revealed the identity of the carriers. The deletion of this information, although it represented a small percentage of overall international telecommunications traffic and revenues, did skew the tables reporting carrier-by-carrier revenues and the tables reporting country-by-country revenues. We would like to avoid such problems in the future. We seek comment on ways that we can improve the accuracy of the Commission's International Telecommunications Data report by ensuring that it includes data from all carriers.

71. Carriers that seek to protect the confidentiality of particular data elements may request such treatment under section 0.459 of the Commission's rules.¹³⁶ That rule requires such a carrier to justify fully its request for confidentiality by providing enough information for the Commission to determine the need for confidential treatment.¹³⁷ The rule requires a carrier requesting confidentiality to submit an unredacted version of its data, as well as a redacted version to be made publicly available. Should the Commission decide to grant a request for confidential treatment of information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA), that Act requires the Commission to disclose publicly the information upon an appropriate request.¹³⁸ We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release on public interest grounds information that does fall within the scope of a FOIA exemption. We seek comment on the granting of confidential treatment for particular pieces of data in the annual traffic and revenue or circuit-status reports.

¹³⁶ 47 C.F.R. § 0.459 (2002)

¹³⁷ See 47 C.F.R. § 0.459(b)

¹³⁸ See 47 C.F.R. § 0.461 (2002), 5 U.S.C. § 552

2. Definitions

72. We seek comment on which terms, if any, we should define in the proposed rule. Currently neither section 43.61 nor section 43.82 contains any definitions. Section 43.61(c), however, refers to the definitions of “affiliated”¹³⁹ and “foreign carrier”¹⁴⁰ found in section 63.09.¹⁴¹ We seek comment on whether the proposed rule should continue to refer to the definitions in section 63.09 or whether the definitions should be contained in the proposed rule itself.

73. We also seek comment on the continued use and proper definitions of the terms “facilities-based,” “facilities resale,” and “pure resale.” Although section 43.82 does not define “facilities-based common carrier,” the term is defined in section 63.09.¹⁴² The *Section 43.61 Filing Manual* uses a similar, but different, definition for “facilities-based services.”¹⁴³ The

¹³⁹ “Two entities are *affiliated* with each other if one of them, or an entity that controls one of them, directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one

“Also, a U.S. carrier is *affiliated* with two or more foreign carriers if the foreign carriers, or entities that control them, together directly or indirectly own more than 25 percent of the capital stock of, or control, the U.S. carrier and those foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States” 47 C.F.R. § 63.09(e)(2002) (emphasis in original)

¹⁴⁰ “*Foreign carrier* is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC-88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country.” 47 C.F.R. § 63.09(d)(emphasis in original).

¹⁴¹ 47 C.F.R. § 63.09

¹⁴² “*Facilities-based carrier* means a carrier that holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in the U.S. end of an international facility, regardless of whether the underlying facility is a common carrier or non-common carrier submarine cable or a satellite system.” 47 C.F.R. § 63.09(a)(emphasis in original).

¹⁴³ “Facilities-based services are those services provided using international transmission facilities owned in whole or in part by the carrier providing service. Facilities-based carriers use one or more international channels of communications to provide international telecommunications service. An international channel is a wire or radio link that facilitates electronic communications between a United States point and another world point. A facilities-based carrier either owns international channels, has an ownership interest in the channel such as an indefeasible right of use (IRU), or leases the channel from an entity that does not report [those circuits in its own Section 43.61 reports]. Carriers must provide detailed data for the facilities-based services that they provide.” *Section 43.61 Filing Manual* at 15. See also *Manual for Filing International Traffic Statistics pursuant to Section 43.61 of the Commission’s Rules*, Order, 10 FCC Rcd 13418, 13420, ¶ 9 (IAD/CCB, 1995) (1995 Manual Revision Order).

filing manual also defines "facilities-resale services"¹⁴⁴ and "pure resale."¹⁴⁵ The *Section 43 82 Filing Manual* uses the definitions of those terms set out in the *Section 43 61 Filing Manual*.¹⁴⁶

74 We propose to amend the definition of "facilities-based" services to clarify that the term includes services that are provided using international transmission facilities that are leased from another common carrier or non-common carrier, other than a lease of private line capacity. We propose to adopt the same definition both for purposes of international carrier reporting under Part 43 of the rules and authorization of international service under Part 63. The current definition of "facilities-based carrier" under section 63.09(a) refers to leases of "bare capacity," which apparently has caused confusion among reporting carriers. A lease of "bare capacity" is intended to be distinguished from the resale, or lease, of a private line circuit obtained directly or indirectly from a facilities-based international common carrier.¹⁴⁷ Thus, under the proposed rule, a facilities-based common carrier must report annually each active and idle circuit in the U.S. end of an international transmission facility in which it has acquired an ownership, indefeasible-right-of-user, or leasehold interest, other than the lease of a private line circuit from another reporting carrier. The proposed rule also would make clear that, in circumstances where a facilities-based carrier has executed a lease of bare capacity with another common carrier (or non-common carrier), it is the obligation of the lessee only to report the circuit(s) covered by the lease.

75 We also propose to recharacterize and redefine "facilities-resale" service as "private line resale" service to be consistent with the terminology used for international authorization of service in Part 63 of the rules and to better distinguish between facilities-based service and service provided utilizing "resold" or "leased" private lines obtained by a carrier directly or indirectly from an underlying facilities-based carrier. We seek comment on these proposals.

3. Electronic Filing

76 We seek comment whether it would significantly expedite and facilitate the submission of data if we were to encourage or mandate carriers to submit their traffic and revenue data and their circuit-status data electronically. Currently, the section 43.61 and 43.82 filing manuals direct carriers to submit their traffic and revenue and circuit-status data on diskettes, in ASCII-based record format fields.¹⁴⁸ In a number of areas, such as the filing of

¹⁴⁴ "Facilities Resale services are provided by a carrier utilizing non-switched international circuits leased from other reporting international carriers. A facilities resale service is provided over international channels which are subject to Section 43 61 reporting by the underlying carrier. Carriers must provide detailed data for the facilities resale services that they provide." *Section 43 61 Filing Manual* at 15.

¹⁴⁵ "Pure resale services are switched services that are provided by reselling the international switched services of other carriers. Pure resale services are not provided to the public over the reseller's international channels of communications. Pure resale carriers may own domestic switches and circuits, but rely on other carriers to carry switched traffic between the United States and foreign points." *Section 43 61 Filing Manual* at 16.

¹⁴⁶ *Section 43 82 Filing Manual* at 8.

¹⁴⁷ See *Section 43 82 Filing Manual* at 5. Resold private line circuits currently are reported annually in the section 63 23(e) circuit addition reports, which we propose to eliminate. See Section III.E.

¹⁴⁸ This is because the DOS-based computer program the Commission uses to process the carrier data submissions and to prepare the annual International Telecommunications Data report requires data to be submitted in that format.

section 214 applications, we have encouraged applicants to file their data electronically, because electronically-filed data can be processed more quickly.

77 Applicants also have found electronic filing beneficial because the materials needed for filing are available online, without the need for obtaining a hard copy, and the information required for an application can be entered directly into the Commission's computer system. Indeed, some carriers have requested that we allow them to file their section 43.61 and 43.82 data electronically, using a commercial spreadsheet computer program. Appendix C contains a staff recommendation that would allow carriers to file their traffic and revenue and circuit-status information using an electronic spreadsheet program. Electronic filing of these data should offer the same benefits of easy data entering and processing that we have experienced with our existing electronic filing arrangements.

78 To receive the maximum benefits from electronic filing, it would be necessary for all carriers to submit their data in electronic form and file in the same electronic format. We agree with the staff that basing electronic filing on the use of a commercial spreadsheet computer program would simplify the process of carrier data submission and Commission analysis of the traffic and revenue and circuit-status data. It appears that existing spreadsheet programs would be sufficient for Commission staff to analyze and consolidate the carriers' data submissions. It also appears that these spreadsheet programs would be sufficient to allow carriers to submit their data easily and accurately. Internet access has become sufficiently common that few if any carriers would be disadvantaged by requiring them to file their data electronically. Further, the fact that commercial spreadsheet software is readily available and relatively inexpensive should further reduce the burden on carriers of electronic filing. As a result, we tentatively conclude that we should require carriers to submit their data electronically. We seek comment on this proposal and the staff recommendation in Appendix C.

4. Transition Period

79 We seek comment on whether a transition period for any changes to the reporting requirements would be necessary. If we determine that it is in the public interest to retain some or all of the reporting requirements, the staff would need to revise the filing manual prior to the first reports being filed under the new rules.¹⁴⁹ Does there need to be a transition period in addition to the time that would be required to draft and implement the new filing manual?¹⁵⁰ We also seek comment on whether there should be a transition period if we decide to eliminate the reporting requirements.

IV. CONCLUSION

80. In this Notice, we set forth a number of proposals to revise several sections of Part 43 that establish the reporting requirements for carriers providing international service. These proposals are designed to protect consumers and U.S. carriers from anti-competitive behavior and to ensure that consumers enjoy greater choice of international service providers and lower prices. We seek comment on those proposed rule changes. We also seek comment on a proposal

¹⁴⁹ Currently, there are separate filing manuals for the 43.61 traffic and revenue reports and the 43.82 circuit status reports. We have proposed to consolidate the two manuals into one. See Section III F 3 *supra*.

¹⁵⁰ Any new reporting manual would be subject to review by the Office of Budget and Management under the Paperwork Reduction Act of 1995, P.L. 104-13, 44 U.S.C. § 3501.

to repeal section 43.53 that requires providers of telegraph communications to file with the Commission copies of the division-of-tolls agreements into which they enter with their overseas correspondents

V. ADMINISTRATIVE MATTERS

A. Ex Parte Presentations

81. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁵¹ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.¹⁵² Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules as well

B. Initial Regulatory Flexibility Analysis

82. Pursuant to the Regulatory Flexibility Act (RFA),¹⁵³ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and actions considered in this Notice. The text of the IRFA is set forth in Appendix A. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.¹⁵⁴

C. Initial Paperwork Reduction Act of 1995 Analysis

83. This Notice contains either proposed and/or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days from date of publication of the Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility, (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on

¹⁵¹ 47 C.F.R. §§ 1.1200, 1.1206, *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, GC Docket No. 95-21, Report and Order, 12 FCC Rcd 7348 (1997)

¹⁵² 47 C.F.R. § 1.1206(b)(2)

¹⁵³ See 5 U.S.C. § 603. The RFA, see U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

¹⁵⁴ 5 U.S.C. § 603(a).

the respondents, including the use of automated collection techniques or other forms of information technology.

D. Comment Filing Procedures

84 Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before [60 days after Federal Register publication], and reply comments on or before [90 days after Federal Register publication]. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Parties are strongly encouraged to file electronically. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

85. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this Notice, however, commenters must transmit one copy of their comments to each docket or rulemaking number referenced in the Notice. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply.

86. Parties who choose to file by paper must file an original and four copies of each filing. Each filing should also include an electronic version of the comments filed. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's mail contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

87. Comments submitted on diskette should be on a 3.5 inch diskette formatted in an IBM-compatible format using Word for Windows or compatible software. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in the caption of this Notice, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file.

88. All parties must file one copy of each pleading electronically or by paper to each of the following:

- (1) The Commission's duplicating contractor, Qualex International, 445 12th Street,

S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com, facsimile: (202) 863-2898, phone (202) 863-2893

- (2) James Ball, Chief, Policy Division, International Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail: James.Ball@fcc.gov.
- (3) Alan I. Feldman, Acting Chief, Industry Analysis and Technology Division, Wireline Competition Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail: Alan.Feldman@fcc.gov.
- (4) David Krech, Senior Legal Advisor, Policy Division, International Bureau, 445 12th Street, S.W., Washington, D.C. 20554, e-mail: David.Krech@fcc.gov.
- (5) John F. Copes, Attorney, Policy Division, International Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail: John.Copes@fcc.gov
- (6) Linda D. Blake, Public Utilities Specialist, Industry Analysis and Technology Division, Wireline Competition Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail: Linda.Blake@fcc.gov.
- (7) James Lande, Economist, Industry Analysis Division, Wireline Competition Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail: Jim.Lande@fcc.gov.

89. Comments and reply comments and any other filed documents in this matter may be obtained from Qualex International, in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 863-2893, via facsimile at (202) 863-2898, or via e-mail at qualexint@aol.com. The pleadings also will be available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C. 20554 and through the Commission's Electronic Filing System (ECFS) accessible on the Commission's World Wide Website, www.fcc.gov

90. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules.¹⁵⁵ All parties are encouraged to utilize a table of contents, to include the name of the filing party and the date of

¹⁵⁵ 47 C.F.R. § 1.49.

the filing on each page of their comments' length of their submission. We also strongly encourage that parties track the organization set forth in this Notice in order to facilitate our internal review process.

91 Written comments by the public on the proposed and/or modified information collections are due 60 days from the date of publication of the Notice in the Federal Register. Written comments must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on the proposed and/or modified information collections on or before 60 days after the date of publication in the Federal Register of the Notice. In addition to filing comments with the Secretary, Marlene H. Dortch, a copy of any comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, S W., Washington, D.C. 20554, or via the Internet to Judith.B.Herman@fcc.gov and to Kristy L. LaLonde, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, N W., Washington, D.C. 20503 or via the Internet to [Kristy L. LaLonde@omb.eop.gov](mailto:Kristy.L.LaLonde@omb.eop.gov) or via fax at 202-395-5167

92 Commenters that file what they consider to be proprietary information may request confidential treatment pursuant to section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816 (1998), Order on Reconsideration, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. See 47 C.F.R. § 0.461; 5 U.S.C. § 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release on public interest grounds information that does fall within the scope of a FOIA exemption.

E. Further Information

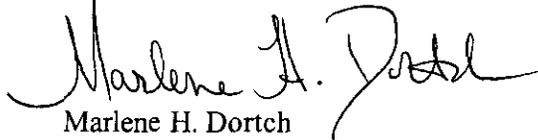
93. For further information regarding this proceeding, contact James Ball, Chief, Policy Division, International Bureau, David Krech, Senior Legal Advisor, Policy Division, International Bureau, or John Copes, Attorney, Policy Division, International Bureau at (202) 418-1460. Information regarding this proceeding and others may also be found on the Commission's website at www.fcc.gov

V. ORDERING CLAUSES

94 Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j) 11, 201-205, 211, 214, 219, 220, 303(r), 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C §§ 151, 154(i), 154(j), 161, 201-205, 211, 214, 219, 220, 303(r), 309 and 403, this NOTICE OF PROPOSED RULEMAKING IS HEREBY ADOPTED and COMMENTS ARE REQUESTED as described above.

95 IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION


Marlene H. Dortch
Secretary